

APR 25 1977

IN THE

MICHAEL RODAK, JR., CLERK

Supreme Court of the United States
1976-77 TERM

No. 76 - 1479

CLARA QUALLS.

Petitioner.

VS.

FRESNO COUNTY BOARD OF SUPERVISORS, et al.

AND

STATE OF CALIFORNIA, et al.

Respondents.

**PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS,
FOR THE NINTH CIRCUIT**

CLARA QUALLS, in pro per.
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IN THE

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No.

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**PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS,
FOR THE NINTH CIRCUIT**

Petitioner, Clara Qualls respectfully prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Ninth Circuit, filed January 25th 1977 affirming the judgment of the United States District Court, Eastern District of California, Dated September 2nd 1976 and filed September 2nd 1976. Page 48 in certified "Record On Appeal."

Petitioner also respectfully prays for a review of the judgment in the Superior Court of the State of California, in and for the County of Fresno, dated May 12th 1976 and filed May 12th 1976 in which the Honorable Judge Hollis Best stated: "IT IS ORDERED that defendant's demurrer to the complaint be, and is hereby sustained, and plaintiff is hereby granted fifteen (15) days, after notice in which to amend said complaint." Petitioner had no opportunity to be heard at this hearing.

Petitioner also respectfully prays for a review of the judgment in the Superior Court of the State of California, in and for the County of Fresno, dated July 6th 1976 and filed July 7th 1976 in which the Honorable Judge Kenneth Andreen stated: "IT IS ORDERED that defendants' demurrer to the amended complaint be, and is hereby sustained, and plaintiff is hereby granted fifteen (15) days, after notice in which to amend said complaint." At this hearing, Judge Andreen was due in another Court and Petitioner had no opportunity to be heard, however Judge Andreen asked Petitioner to leave her written response with him to be read later.

JURISDICTION

The jurisdiction of this court is invoked because the United States Constitution protects its citizens from laws depriving property owners of the use of their land for the Public's viewing pleasure. See "Constitutional Provisions." Page 3.

QUESTION PRESENTED

Whether the State Scenic Highway Program and the Scenic Highway Element should be reversed giving back to the property owners their freedom to use their land as needed and their right to the freedom and enjoyment of planning and building their own homes and landscaping their yards.

CONSTITUTIONAL PROVISIONS INVOLVED

Article 14. Section 1. "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

In Article Seven of the Bill of Rights it states in part, "... nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation."

Article VI, third paragraph states in part, "The Senators and Representatives before mentioned and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; . . ."

Article III, Section 2, states in part, "In all Cases affecting Ambassadors, . . . and those in which a State shall be Party, the supreme court shall have original Jurisdiction . . ."

STATEMENT OF FACTS

In Article 2.5 "STATE SCENIC HIGHWAYS" on page 10 of "Record On Appeal," under 261, the last part it states in part, ". . . The standards for official scenic highways shall also require that local governmental agencies have taken such action as may be necessary to protect the scenic appearance of the scenic corridor, the band of land generally adjacent to the highway right-of-way, including, but not limited to (1) regulation of land use and intensity (density) of development; (2) detailed land and site planning; (3) control of outdoor advertising; (4) careful attention to and control of earthmoving and landscaping; and (5) the design and appearance of structures and equipment."

The definition of a Scenic Highway Corridor by Government Code — Section 51201 (i) states in part, "A Scenic Highway Corridor is an area adjacent to, and within view of, the right of way . . ."

Parts of the Scenic Highway Element adopted by the Fresno County Board of Supervisors, are:

"2.01. Identify a system of scenic roads which traverse land with outstanding unique natural scenic qualities or provide access to regionally significant scenic or recreational areas."

"2.02. Preserve the scenic qualities of land adjacent to scenic roads."

"3.01 (b). Scenic Drives: Two-lane rural roads traversing land with outstanding natural scenic qualities and connecting with scenic highways.

"3.12. The Board of Supervisors may expand Fresno County's scenic road system by designating additional routes which satisfy the definitions and intent of 304-00-3.01."

With these Scenic Highway Laws in effect the owner has no control over his property.

We had a public meeting with the Fresno County Board of Supervisors before October 31st 1975 when at that time I wrote a letter to our President, Mr. Jerry Ford. I received an answer from the United States Department of Transportation. We protested this depriving the foothill property owners of the control of their land for the public's scenic use.

The last meeting I attended was held at our Auberry Elementary School about the middle of March 1976. There were about 150 neighbors present. Our District Supervisor, Mr. John Donaldson, was also present. He told us that the Scenic Highway Element had already been adopted on February 17th 1976. The neighbors protested bitterly. I felt humiliated and angry to think they called us to meetings to protest their scenic highway laws when they had already adopted it. I felt, and said, that we were wasting our time and effort arguing with these Supervisors and the State of California and our only recourse was to sue the State of California and the Fresno County Board of Supervisors.

I filed a complaint in the Superior Court of the State of California in and for the County of Fresno dated March 25th 1976. I later used this same Complaint, changing only the Name of the Superior Court of the State of California to the United States District Court, Eastern District of California. Page 1 through page 4 of the "Record on Appeal."

JURISDICTION FOR REVIEW OF JUDGMENT OF STATE AND FEDERAL COURTS

"State court's inability to grant relief does not bar a federal court from assuming jurisdiction to inquire into alleged deprivation of federal constitutional rights." (*Baker v. Carr*, 206 F. Supp. 341).

"When parties charge deprivation of civil rights and recourse elsewhere would be futile federal courts should take cognizance of their claim." (*Tonwal Realities, Inc. v. Beame*, 406 F. Supp. 363).

In Section 1331 of 28 USCA, under No. 42: RETENTION OF JURISDICTION: Jurisdiction which was once attached is not lost by subsequent events." *Atlantic Corp. v. U.S. Ca. Mass.*, 1962, 311 E.2nd 907.

Section 1331 of 28 USCA No. 31: "Where object of action is to enforce a right created by, or to interpret a law of the United States, exclusive jurisdiction is in federal courts." *Security First National Bank of Los Angeles v. Republic Pictures Corp.* D.C. Cal., 1951, 97 F. Supp. 360 reversed on other grounds 197 F. 2nd 767.

Section 1331 of 28 USCA No. 45: "The abstention doctrine does not permit federal District Courts to defer to State Courts for decision of federal Constitutional questions." *Id.*

Section 1331 of 28 USCA No. 17: State Laws, Effect of, "Right to Federal Court remedies, granted by Congress, cannot be taken away by state, by contempt proceedings or otherwise." *Donovan v. City of Dallas*, Tex., 1964, 84 SCT. 1579 U.S. 408, 12 L. Ed. 2nd 409.

"State Laws cannot enlarge or restrict jurisdiction of federal courts or those of any other state." *Markham v. City of Newport News*, C.A. Va. 1961, 292 F. 2nd 711.

Section 1331 of 28 USCA: No. 17, State Laws, Effect of: "The Power of the Federal Courts was not granted by, and may not be revoked, impaired, or restricted by, any law of a State." *Brun v. Mann.*, Colo., 1906 151 F. 147, 80 CCA 513.

Some other cases proving the jurisdiction of United States Courts to hear this instant case are: U.S.C.A. Amend. 6 to 12 Constitution, page 868, (1) Construction with other Constitutional provisions: "Notwithstanding this amendment, violations of Amend. 14 by state officers or agencies, acting in their official capacities, may be enjoined by federal courts." And: (3) Law Governing: "For purpose of deciding whether state agency will be considered the alter ego of the state and immune from suit, federal and not state law is to be applied." *Pendergast v. Long Island State Park Commission DCNY*, 1970, 330 F. Supp. 438.

U.S.C.A. Amend. 14, Constitution, Due Process, page 55. (2007) Regulation of use of property: "It is not merely the absolute act of taking by the state that constitutes a violation of this amendment, if without just compensation; a regulation which deprives an owner of all or most of his interest is also condemned as an unreasonable exercise of a police power." *Sabto v. Sabato*, 1975, 342 A. 2d. 886, 135 N.J. Super. 158.

In 134 U.S. S. Ct. 33 Law Ed. page 843: "The appearance of a State in a Court of the United States is a voluntary submission to its jurisdiction." *Clark v. Barnard*, 108 U.S. 436 (27:780).

CONCLUSION

Petitioner respectfully prays that a writ of certiorari be issued to review and reverse the judgment of the United States Court of Appeals for the Ninth Circuit, the United States District Court, Eastern District of California and the Superior Courts of the State of California, in and for the County of Fresno.

Respectfully submitted,

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March 1977

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4 4499 East Kings Canyon Road
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6 Telephone: 488-2963
7 Attorneys for Defendants

FILED
H. L. MAGINI, CLERK
R. BROWN, DEPUTY

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF FRESNO

10 CLARA QUALLS,)
11 Plaintiff,) NO. 201540-2
12 vs.) ORDER SUSTAINING DEMURRER
13 FRESNO COUNTY BOARD OF)
14 SUPERVISORS, et al.,)
15 Defendants.)

16 The Demurrer of defendants, FRESNO COUNTY BOARD OF SUPERVI-
17 SORS, SUPERVISORS JOHN VENTURA, JOHN DONALDSON, SHARON LEVY,
18 WILLARD E. JOHNSON, and BRUCE BENSON, to the complaint in the above-
19 entitled action came on regularly to be heard on May 11, 1976,
20 ROBERT M. WASH, COUNTY COUNSEL, by HARVEY A. VAN DUSEN, DEPUTY
21 COUNTY COUNSEL, appearing as counsel for defendants and CLARA
22 QUALLS, plaintiff appearing in Propria Persona. After hearing,
23 said Demurrer was sustained and good cause appearing therefor.

24 IT IS ORDERED that defendant's demurrer to the complaint
25 be, and is hereby sustained, and plaintiff is hereby granted
26 fifteen (15) days, MAY 12 1976 in which to amend said complaint.

27 DATED: _____

28 HOLLIS G. BEST
29 Judge of the Superior Court

30
31
32
2

1 ROBERT M. WASH, COUNTY COUNSEL
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JUL 7 1976 '76

CLERK'S CLERK

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF FRESNO

10 CLARA QULLS,)
11 Plaintiff,) NO. 201540-2
12 vs.) ORDER SUSTAINING DEMURRER TO
13 PRESNO COUNTY BOARD OF) AMENDED COMPLAINT
14 SUPERVISORS, et al.,)
15 Defendant.)

16 The Demurrer of defendants, FRESNO COUNTY BOARD OF
17 SUPERVISORS, SUPERVISORS JOHN VENTURA, JOHN DONALDSON, SHARON
18 LEVY, WILLARD H. JOHNSON, and BRUCE BRONSON, to the amended
19 complaint in the above-entitled action came on regularly to be
20 heard on June 16, 1976, ROBERT M. WASH, COUNTY COUNSEL, by
21 HARVEY A. VAN DUSEN, DEPUTY COUNTY COUNSEL, appearing as counsel
22 for defendants and CLARA QULLS, plaintiff, appearing in Propria
23 Personas. After hearing, said Demurrer to Amended Complaint was
24 sustained and good cause appearing therefor,

25 IT IS ORDERED that defendants' demurrer to the amended
26 complaint be, and is hereby sustained, and plaintiff is hereby
27 granted fifteen (15) days, after notice in which to amend said
28 complaint.

29 DATED: JUL 6 1976

30
31 KENNETH ANDREAN
32 Judge of the Superior Court

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2 Harvey A. Van Dusen, Deputy
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7 Attorneys for Defendants

FILED

SEP 2 1976

CLERK, U. S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
M. J. CLOKE

ENTERED

SEP 2 1976

CLERK, U. S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
M. J. CLOKE

8 UNITED STATES OF AMERICA
9 EASTERN DISTRICT OF CALIFORNIA
10 CLARA QULLS,)
11 Plaintiff,) No. F-76-130-Civ
12 vs.)
13 FRESNO COUNTY BOARD OF SUPERVISORS,) ORDER DISMISSING
14 a municipal government body, SUPERVISOR) ACTION
15 JOHN VENTURA, SUPERVISOR JOHN DONALDSON,)
16 SUPERVISOR SHARON LEVY, SUPERVISOR)
17 WILLARD H. JOHNSON, SUPERVISOR BRUCE)
18 BRONSON, individually, STATE OF CALIFORNIA,)
19 a Constitutional state governing body,)
20 and DOES 1 through CC, INCLUSIVE,)
21 Defendants.)

22 Upon consideration of defendants' motion to dismiss filed
23 herein pursuant to Rule 12 (b) of the Federal Rules of Civil
24 Procedure, which motion was heard on August 30, 1976, and good
25 cause appearing therefor,

26 IT IS HEREBY ORDERED that the action of plaintiff be and
27 the same is hereby dismissed.

28 DATED: 9-2-76

M. J. Cloke
United States District Judge

BEST COPY AVAILABLE

FILED

JAN 25 1977
SAC

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EMIL E. MELFI, JR.
CLERK, U.S. COURT OF APPEALS

CLARA QUALLS,
Plaintiff-Appellant } No. 76-3058
v.
FRESNO COUNTY BOARD OF
SUPERVISORS, et al., } MEMORANDUM
and
STATE OF CALIFORNIA, et al.,
Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of California

Before: HUFSTEDLER, SNEED, and KENNEDY, Circuit Judges.

Appellant filed a complaint attempting to challenge the constitutionality of various provisions of the California Streets and Highways Code, whereby the California Scenic Highway Program was created, on the ground that the statutes deprive her of her property without due process of law. The district court dismissed for lack of subject matter jurisdiction.

Appellant, appearing pro se, strongly believes that the Program will impair her property, but her pleadings are completely unclear about the respects in which such impairment has or will inevitably occur. We recognize that she has not had legal training and for that reason, we construe her pleadings with great liberality. We thus assume solely for the purpose of this appeal that ultimately

1/5/77

she could have amended her complaint to state explicitly the factual foundation for her claim that the statutes involved had so far damaged her property as to raise a due process question.

Nevertheless, her complaint was properly dismissed for lack of subject matter jurisdiction. Federal jurisdiction is an extremely complex subject which baffles many well-trained lawyers who do not practice regularly before the federal courts. It is, therefore, understandable that the appellant, unversed in the law, finds it hard to accept that the door to the federal courts is procedurally closed to her grievance. The doctrine with which we are concerned is federal abstention. Here, as in Railroad Commission v. Pullman Co., 312 U.S. 496 (1941), the issues involving state law must first be resolved in the state courts. Land use planning is peculiarly within the area of sensitive social policy initially committed to the states. (Cf. Rancho Palos Verdes v. City of Laguna Beach, ___ F.2d ___ [Nos. 75-1813/2193/2791]. Slip op'n Dec. 28, 1976]; Canton v. Spokane School Dist. No. 81, 498 F.2d 840 (9th Cir. 1974)).

AFFIRMED.

11/18/77